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## **U.S. Department of Justice**

United States Attorney Southern District of New York

The Silvio J. Mollo Building One Saint Andrew's Plaza New York, New York 10007

October 9, 2020

## BY CM/ECF

The Honorable Katherine Polk Failla United States District Judge Southern District of New York 40 Foley Square New York, New York 10007

Re: <u>United States v. Anilesh Ahuja et al.</u>

S1 18 Cr. 328 (KPF)

Dear Judge Failla:

The Government respectfully writes in response to the defendants' October 1, 2020 letter requesting 13 categories (and subcategories) of additional information from the Government regarding the document review conducted by AUSA Karl Metzner, and the defendants' October 2, 2020 letter requesting a hearing in this case. (Dkt. 409).

In their July 6, 2020 letter to the Court, the defendants argued that the Government "should be required to produce documents to test its claims of good faith and honest mistakes, and, just as importantly, to complete the factual record so that the defendants can evaluate what relief they may wish to seek." (Dkt. 385, at 26). The Government thus agreed to conduct a broad and exhaustive review of its files (the "Review"). Over approximately two months, AUSA Karl Metzner, a Deputy Chief of Appeals who was not part of the trial team, 1 reviewed nearly 10,000 communications, many of which were internal communications between prosecutors on the trial team.

On September 24, 2020, the Government produced the results of the Review to the Court and the defendants — approximately 42 emails, certain text messages, and phone records. As noted in the Government's letter dated September 24, 2020, those results provide no basis for additional discovery or relief, nor any basis to undermine confidence in the jury's verdict. (Dkt. 406). The Government's September 24 letter also included a six-page, detailed description of the Review, specifying the search terms that AUSA Metzner employed, the date ranges of the materials that he searched, and other circumstances of the Review, as well as the materials that AUSA Metzner used to inform his determinations as to what documents to produce, including letters that the defendants submitted to the Court and to the Government, arguments that the defendants made to the jury, and transcripts of Court conferences. (Dkt. 406 at 2 n.1).

The defendants requested that a Deputy Chief of Appeals conduct the Review.

After spending eight days reviewing this production and detailed summary of the Review that AUSA Metzner undertook, the defendants did not make any motions. Instead, they seek still more information about the Review. Moreover, their new discovery demands are not limited to discrete points of clarification that would bring into further relief the post-trial issues they have raised. Rather, the defendants have made an extensive series of requests for additional information that range from the most technical matters (*see* Oct. 1 Letter at ¶¶ 1, 4), to open-ended questions about AUSA Metzner's decision-making process (*see id.* at ¶ 13), to an attempt to have the Government produce communications that AUSA Metzner determined did not have to be produced (*see id.* at ¶ 5). The defendants' letter is essentially an effort to have the Government amplify the extensive and time-intensive review that has now been completed.

The Government respectfully submits that in light of the breadth and duration of the Review that it has already undertaken, and the detailed description of the Review that it has already provided, the Court should deny the defendants' request that the Government respond to five pages of interrogatories.<sup>2</sup> The record relating to the post-trial issues raised by the defendants has been sufficiently developed for the defendants to proceed with any application they intend to make to the Court. For the same reasons, the Government also respectfully submits that no hearing is necessary in this case.

Respectfully submitted,

AUDREY STRAUSS Acting United States Attorney

By:\_\_\_/s/

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<sup>&</sup>lt;sup>2</sup> Should the Court want additional information about the Review conducted by AUSA Metzner, the Government is of course prepared to provide it to the Court in any form that would aid the Court.